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In the Supreme Court of the United States

OCTOBER TERM, 1980

CASPAR W. WEINBERGER, SECRETARY OF DEFENSE, ET AL., PETITIONERS

v.

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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v.

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL.*

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QUESTION PRESENTED

Whether the United States Navy's alleged plan to store nuclear weapons in an ammunition storage facility on the island of Oahu, Hawaii must be the subject of a publicly-disclosed "hypothetical" environmental impact statement under the National Environmental Policy Act of 1969, even though such a statement of necessity would reveal military secrets.

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* In addition to Secretary Weinberger, the petitioners are John F. Lehman, Jr., Secretary of the Navy; Thomas P. Hayward, Chief of Naval Operations; Stanley J. Anderson, COMNAV Base Pearl Harbor; and Donald C. Davis, Commander-in-Chief of the Pacific Fleet. In addition to Catholic Action of Hawaii/Peace Education Project, and a second organization, Life of the Land, the respondents include James Albertini; Ian Yonge Lind; Eileen Belton; Peter Tagalog; Roger Sheetz; Edward Casey; and Nora Ogawa.

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The Solicitor General, on behalf of the Secretary of Defense, the Secretary of the Navy, and the other federal officials named as defendants herein, petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-7a) and the opinion of the district court (App. D, *infra*, 10a-15a) are not reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 8a) was filed on July 17, 1980. An order denying a petition for rehearing (App. C, *infra*, 9a) was filed on October 10, 1980. On January 5, 1981, Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including February 16, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, reads, in pertinent part:

> The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—
>
> * * * * *

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

2. The Atomic Energy Act of 1946, as amended, 42 U.S.C. 2011 *et seq.*, provides, in pertinent part:

42 U.S.C. 2014.

* * * * *

(y) The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.

* * * * *

42 U.S.C. 2161.

It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

(a) Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 2164 of this title; and

(b) The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

42 U.S.C. 2162.

(a) *Periodic determination*

The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

(b) *Continuous review*

The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

(c) *Joint determination on atomic weapons; Presidential determination on disagreement*

In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

(d) *Removal from Restricted Data category*

The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for co-operation entered into in accordance with section 2164(b) of this title.

(e) *Joint determination of the atomic energy programs*

The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of

Central Intelligence jointly determine to be necessary to carry out the provisions of section 403(d) of title 50 and can be adequately safeguarded as defense information.

* * * * *

42 U.S.C. 2277.

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this chapter or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than $2,500.

STATEMENT

1. During the early 1970's, many Hawaiians protested against the alleged storage of nuclear weapons at the Waikele branch of the Lualualei Naval Magazine on the island of Oahu, near Waipahu. They contended that the moving of nuclear weapons to and from the base by truck and helicopter, as well as the storage of such weapons at the base, constituted a hazard to all who lived in the heavily popu-

lated area surrounding Waikele. The Department of the Navy neither admitted nor denied that nuclear weapons were being stored at Waikele since information relating to whether or not an installation is a storage site for nuclear weapons is classified.[1]

In 1974 or 1975, Navy officials undertook to transfer the ammunition and weapons stored at Waikele and elsewhere on Oahu tc the more remote West Loch branch of the Lualualei Naval Magazine, which had been used by the Navy for general storage since 1942 and for ordnance storage since 1959. The transfer to West Loch of additional ordnance required the construction there of additional magazines and associated buildings, all of which were duly authorized by Acts of Congress.

In 1975, the Department of the Navy prepared an environmental impact assessment (App. F, *infra*, 17a-26a) of how, if at all, the relocation of West Loch of the Waikele functions would affect the environment.[2] This assessment, which made no mention of nuclear weapons, concluded that the construction of 48 earth covered magazines and associated buildings and the provision of security for those buildings would have no significant environmental impact. The assessment also concluded that "[t]here are no known significant species [of plants or animals] on the [construction] site" (App. F, *infra*, 20a) and that the nearby Okiokiolepe fish pond (which is listed on the National Register of Historic Places) would not be

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[1] See pages 12-15, *infra*.

[2] The document prepared in 1975 was not, strictly speaking, an environmental impact "assessment". It was, and remains, classified. In June of 1977, that document was revised, and a portion of it was declassified and released to the public as an environmental impact assessment. The declassified, publicly-available assessment is reprinted at Appendix F, *infra*.

affected. Consequently, no formal environmental impact statement was prepared at the construction stage. Three years later, the Department of the Navy prepared a "candidate" or generic environmental impact statement on "Nuclear Aspects of Naval Systems Storage" (App. G, *infra*, 27a-35a) that discussed in general terms, without reference to any specific storage site or surrounding locality, whether nuclear accidents could or were likely to occur, whether a nuclear accident could or would be likely to release radiation, and the extent to which stored nuclear warheads release low-level radioactive emissions.

In March of 1977, a contract was let for the construction of 30 of the projected 48 magazines. In April 1978, another contract was let for the remaining magazines, security fences, a guard house and other facilities.

2. In March of 1978, several groups and individuals who live near or engage in recreational activity in and around West Loch and who allege that the storage facility at West Loch is destined to house nuclear warheads, filed this action to enjoin the Secretary of Defense and various Navy officials from expanding the facility until they had complied with, *inter alia*, the requirements of the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act of 1973, and the National Historic Preservation Act of 1966.

Following a hearing on the merits, the district court concluded (App. D, *infra*, 10a-15a) that the proposed activity does not violate the latter two statutes. With respect to NEPA, the court held that although the construction and use of the storage facilities at West Loch would constitute major fed-

eral action within the meaning of Section 102 of NEPA, complete compliance with the Act was not possible since an enivronmental impact statement would include a discussion of the presence, number and locations of nuclear weapons, of their design, utilization, capabilities and capacities, and of security measures and other devices associated with the storage and use of such weapons, and would therefore conflict with the security data provisions of the Atomic Energy Act and with various federal regulations governing the disclosure of restricted and confidential information. Concluding that the Navy already had complied with NEPA "to the fullest extent possible," the district court entered judgment against the plaintiffs (App. E, *infra*, 16a).

The court of appeals reversed (App. A, *infra*, 1a-7a), and directed the Navy to prepare a "hypothetical" environmental impact statement assessing the "potential consequences of the storage of nuclear weapons at this particular site[,] [taking into] [c]onsideration * * * four environmental factors specified by [the plaintiffs] as being critically important * * *" (*id.* at 5a).[3] The court of appeals also directed the district court to reconsider, in light of the information contained in any such hypothetical environmental impact statement, whether the proposed expansion of the facility at West Loch implicated the National Historic Preservation Act or the Endangered Species Act. Finally, the court of ap-

[3] The four factors are: the risk of nuclear accidents; the enhancement of that risk by the proximity of West Loch to three airports; the likely effects of a nuclear accident on the population and environment surrounding West Loch; and the effects of continued low-level radiation seepage from nuclear warheads stored near populated areas. See App. A, *infra*, 3a.

peals "le[ft] to the district court the question whether injunctive relief is proper at this time." (*id.* at 7a).[4]

REASONS FOR GRANTING THE WRIT

The Department of Defense assumes that the National Environmental Policy Act of 1969 applies to all of its activities, classified and unclassified. Indeed, the Department's regulations on that score are unequivocal (32 C.F.R. 214.8(i)): "[t]he fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with the requirements of [NEPA as set forth in the Department's implementing regulations]." This regulation applies even to highly classified actions such as the maintenance and storage of nuclear warheads. Therefore, without confirming or denying that such weapons might in the future be stored there, the Navy consistently has acted on the premise that NEPA applies to its expansion and operation of the ordnance storage facility at West Loch.

The same regulation goes on to provide, however, that in such circumstances "[e]nvironmental statements, both draft and final, shall be prepared, safeguard and disseminated in accordance with the requirements applicable to classified information * * *. When feasible, these statements shall be organized in such a manner that classified portions can be

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[4] On remand, the respondents have moved to enjoin, pending the filing of a hypothetical environmental impact statement, the movement of nuclear weapons into the West Loch storage facility, and to require the Navy to remove from West Loch any nuclear weapons already stored there. No action has yet been taken on this motion.

made available to the public."[5] 32 C.F.R. 214.8(i). Thus, the crucial question is not whether the Navy must or will comply with NEPA insofar as that statute compels decisionmakers to take specified steps to inform themselves of, and take into account, the environmental consequences of the actions they propose. Rather, at issue is whether the provisions of NEPA relating to the *public development, disclosure and dissemination* of environmental impact statements invariably must be complied with, even where such compliance is likely to reveal military secrets.

The court of appeals attempted to steer a middle course between NEPA's disclosure requirements and

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[5] This regulation corresponds to a regulation promulgated by the Council on Environmental Quality ("CEQ"), the executive agency created by NEPA to, *inter alia*, "review and appraise the various programs and activities of the Federal Government * * * for the purpose of determining the extent to which such programs and activities are contributing to the achievement of [the policy underlying NEPA]" (42 U.S.C. 4344(3)) and the agency whose "interpretation of NEPA is entitled to substantial deference" (*Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979)). The CEQ regulation provides (40 C.F.R. 1507.3(c)):

> Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

the secrecy that, by statute, must attend nuclear installations. As we shall presently demonstrate, the resultant compromise—a publicly available "hypothetical" environmental impact statement—although perhaps reasonable in concept, is quite unworkable in practice. Any EIS, including one based on a series of hypotheses, that is responsive to the environmental concerns articulated by the court of appeals, would necessarily reveal classified information about the types of weapons in our nuclear arsenal, their design and capabilities, and the safety and security measures employed in connection with them. The only way to avoid such a consequence would be to draft an EIS that in its unclassified form is so abstract, general and incomplete as to be, if not incomprehensible, of no appreciable benefit to anyone not privy to the classified annexes. And neither of these unsatisfactory alternatives would provide the decisionmaker—the Navy—with as much usable information about the actual environmental impact of its true plans as would a "real," albeit wholly classified, EIS. Moreover, the requirement that the Navy file a hypothetical EIS in connection with the West Loch storage facility would necessitate the preparation of similar EIS's for every other facility capable of storing nuclear weapons, without regard for whether such storage is actually contemplated, lest filing or the failure to file be taken as a key to where weapons are to be stored. The consequent administrative burdens far outstrip any the court of appeals reasonably could have anticipated or intended.

1. The Atomic Energy Act prohibits the public disclosure of information respecting the location, design, capabilities, capacities and security measures surrounding nuclear weapons.

The Atomic Energy Act of 1946, as amended, 42 U.S.C. 2011 *et seq.*, declares that all data concerning the design, manufacture or utilization of atomic weapons is "Restricted Data" (42 U.S.C. 2014(y)), and requires the Atomic Energy Commission [6] to control the dissemination and declassification of such data "in such a manner as to assure the common defense and security" (42 U.S.C. 2161). The Atomic Energy Commission can, and indeed must, from time to time determine whether Restricted Data may, "without undue risk to the common defense and security," be declassified and published. 42 U.S.C. 2162 (a). Where Restricted Data relates primarily to the military utilization of atomic weapons, the determination must be made jointly by the Commission and the Department of Defense. 42 U.S.C. 2162(c). Whenever the Commission and the Department conclude that information relating to the military utilization of atomic weapons should be neither restricted nor declassified and that it can be "adequately safeguarded as defense information" (42 U.S.C. 2162 (d)), they may lift its Restricted Data designation

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[6] The Atomic Energy Commission was abolished and its functions under 42 U.S.C. 2162 transferred to the Energy Research and Development Administration on October 11, 1974. Pub. L. No. 93-438, 88 Stat. 1233. The Energy Research and Development Administration, in turn, was terminated and its functions under 42 U.S.C. 2162 transferred to the Department of Energy on August 4, 1977. Pub. L. No. 95-91, Title III, Section 301, 91 Stat. 577. Except where the context dictates otherwise, our references to the Atomic Energy Commission apply to its successor agencies as well.

and thereafter apply to it the safeguards used to protect other classified military information.[7]

To implement these provisions governing the classification of information relating to the military use of nuclear weapons, the Energy Research and Development Administration[8] and the Department of Defense have prepared a Nuclear Weapons Classification Guide, CG-W-4 (App. H, *infra*, 36a-45a). That guide indicates generally what classification, if any, is to be given to various types of information. "U" means Unclassified, "C" means Confidential, "S" means Secret, and "TS" means Top Secret. "FRD" means Formerly Restricted Data. The following types of information, most of which formerly were Restricted Data, merit classifications ranging, depending upon the circumstances, from Confidential to Top Secret:

Item 1711: Planning or construction information revealing that installation is a nuclear weapons storage site (C-TS; FRD);

Item 1721: Information revealing installation is a storage site for nuclear weapons, whether or not presence of weapons can be determined (C-TS; FRD);

Item 1732: Quantity of nuclear weapons actually at a site (C; FRD);

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[7] There is a further proviso to the effect that no Formerly Restricted Data may be "transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for co-operation" entered into as elsewhere provided for in the Atomic Energy Act (42 U.S.C. 2162(d)).

[8] See note 6, *supra*.

Item 1742: Overall security measures for a site (S-TS);

Item 1743: Defensive plans for a storage site (S-TS);

Item 1744: Storage site vulnerability studies (S-TS);

Item 1752: That a particular Nuclear-Capable Unit actually has nuclear weapons (C-TS; FRD);

Item 1755: Number of nuclear weapons in storage or with a Nuclear or Nuclear-Capable Unit (C-TS; FRD).

The Department of the Navy has issued a manual entitled Navy Security Classification Guide for Nuclear Weapons, Navy SWOP 55-1 (App. I, *infra*, 46a-56a) that follows the same classification scheme. The first seven items listed in the paragraph above appear in the Navy Manual as items 2-11.1, 2-11.2, 2-11.6.2, 2-11.7.2, 2-11.7.3, 2-11.7.4, and 2.11.8.2, respectively.[9] The Navy also has issued a regulation, designated OPNAV INSTRUCTION 5721.1C (App. J, *infra*, 57a-59a), which forbids its members from revealing any information with respect to the presence or absence of nuclear weapons or components on board any ship, station or aircraft. The only response naval personnel may give to requests for such information is that "it is the policy of the United States Government neither to confirm nor deny the presence or absence of nuclear weapons or components

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[9]The eighth item undoubtedly also is listed in the Navy Manual, but not in the portion that has been declassified and made a part of the record in this case.

on board any ship, station, or aircraft" (App. J, *infra*, 58a).[10]

From even this brief examination it is apparent that virtually every aspect of the activity plaintiffs allege will take place at West Loch—the storage of nuclear weapons—involves restricted or classified military secrets, the disclosure of which is forbidden by the Atomic Energy Act, its implementing regulations and 18 U.S.C. 798.

2. NEPA does not require the public disclosure of information the secrecy of which is mandated by the Atomic Energy Act.

By its own terms, NEPA requires no more than that agencies comply with its policies "to the fullest extent possible." 42 U.S.C. 4332. To be sure, as this Court cautioned in *Flint Ridge Dev. Co.* v. *Scenic Rivers Ass'n*, 426 U.S. 776 (1976), that phrase "is neither accidental nor hyperbolic" and "is a deliberate command that the duty NEPA imposes upon the agencies to consider environmental factors not be shunted aside in the bureaucratic shuffle." *Id.* at 787. Nevertheless the phrase is also a limitation that "recognizes * * * that where a clear and unavoidable conflict in statutory authority exists, NEPA must give way. As we noted in *United States* v. *SCRAP*, 412 U.S. 669, 694 (1973), 'NEPA was not intended to repeal by implication any other statute.' "

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[10] The communication of Restricted Data to anyone not authorized by the Atomic Energy Act to receive it is a criminal offense, punishable by a fine of not more than $2,500. 42 U.S.C. 2277. The furnishing of classified information to an unauthorized person is a criminal offense, punishable by a fine of not more than $10,000 or imprisonment for not more than 10 years, or both. 18 U.S.C. 798.

426 U.S. at 788. It therefore follows that to the extent the public disclosure provisions of NEPA cannot be reconciled with the nondisclosure provisions of the Atomic Energy Act, the latter must prevail. The same conclusion is dictated by the Atomic Energy Act which specifically directs, at 42 U.S.C. 2166(a), that "no Government agency shall take any action under * * * other laws inconsistent with the [Atomic Energy Act's] provisions" governing restricted and classified information.

3. The hypothetical environmental impact statement envisioned by the court of appeals would, of necessity, disclose classified information regarding the types of nuclear weapons the United States has developed, the design of such weapons, their capacities and capabilities, their vulnerabilities, and the steps taken to safeguard them.

The court of appeals apparently recognized that a standard environmental impact statement, if publicly disclosed, would reveal military secrets including whether nuclear warheads are to be stored at a particular site, and if so, in what numbers. In order to avoid that consequence while at the same time honoring NEPA, the court suggested at oral argument and developed in its opinion the concept of an EIS that would "hypothesiz[e], without conceding, that the [West Loch] facility will be put to the use for which it has been made capable," and would draw conclusions "based on a series of hypotheses covering the range of options which the facility has openly presented to the Secretary [of the Navy]" (App. A, *infra*, 6a; footnote omitted).[11] The resultant hy-

[11] The Navy stipulated, for purposes of this case, that the West Loch facility is "capable" of storing nuclear weapons. Based on that stipulation, the court of appeals opined:

pothetical EIS concededly would have the virtue of neither confirming nor denying that nuclear weapons are being stored at a particular site,[12] and would keep secret the actual nuclear firepower at the Navy's disposal. However, even a hypothetical EIS would perforce disclose other information that is equally (or, in some cases, more highly) classified.

For example, were an EIS to hypothesize that a particular facility might store nuclear warheads of type A, that hypothesis would reveal that somewhere in our nuclear arsenal there exist weapons of type A. Similarly, an EIS that addressed, even as a hypothetical matter, the risk that a type A warhead might inadvertently be detonated, and the destructive forces, if any, that such a detonation would unleash, would of necessity touch upon the design of the weapon, its payload, and its destructive capability. Also pertinent would be the design and vulnerability, *vel non*, of the storage site, and the safety and security devices and measures surrounding it.

In theory, the disclosure of secret information could be avoided through the use of classified annexes. See pages 9-10, *supra*. However, since that which can be revealed is in many respects inextricably intertwined with that which must be kept secret, and in view of the inescapable imperative that the Navy

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"[t]he public therefore must assume that at least the possibility exists that nuclear weapons, to the extent of the apparent capacity of the facility (assuming that capacity would be apparent to a knowledgeable observer), will be stored at West Loch" (App. A, *infra*, 5a).

[12] However, the fact of its preparation and dissemination would signal the storage of nuclear weapons unless "cover" hypothetical EIS's were filed in connection with other facilities. See pages 18-19, *infra*.

must err, if at all, on the side of nondisclosure, the publicly-available portion of a partially-classified hypothetical EIS would, in most instances and respects be incomprehensible, or would be so abstract, general and incomplete as to be of no appreciable benefit to Congress, sister agencies, or the general public. Nor would the Navy benefit from such an exercise. NEPA's overriding mandate that decisionmakers inform themselves of the environmental consequences of their proposed actions and take those considerations into account can best be served by the filing, where appropriate, of a "real" EIS directed to the Navy's true plans, even if much, or all of the statement, is withheld from the public.[13]

Finally, the court of appeals' attempt to reconcile the irreconcilable would impose inordinate, and presumably unintended, administrative burdens on the Navy. Once the Navy prepares and disseminates an EIS hypothesizing the storage of nuclear weapons at one facility, it logically must do the same for every other facility capable of storing such weapons,[14] for

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[13] In some circumstances, the result may be that no meaningful adversary proceeding can be pursued. But sometimes "some of the interests of the adversary process are outweighed by the nation's legitimate interests in secrecy and orderly process for disclosure." *Hayden* v. *Nat'l Security Agency/Central Security Service*, 608 F.2d 1381, 1385 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980). See also *Farnsworth Cannon, Inc.* v. *Alton B. Grimes*, No. 79-1260 (4th Cir. Dec. 15, 1980) (en banc).

[14] Indeed, hypothetical EIS's would have to be prepared not only for facilities actually capable of storing nuclear weapons, but for facilities perceived to have that capability as well, lest those who have guessed wrong be given a more accurate picture of our nuclear strength and flexibility.

if hypothetical EIS's were prepared and disseminated only for those facilities where nuclear weapons in fact are stored, the EIS would serve as a kind of paper signpost advertising the site's existence and purpose. The preparation of hypothetical EIS's for facilities where nuclear warhead storage is in fact contemplated conceivably would not place a significantly greater burden on the Navy than would the preparation of standard EIS's. But the preparation of hypothetical EIS's for facilities where such weapons are *not* likely to be stored would be expensive, unsettling, controversial, time-consuming and valueless.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 1981

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

D.C. No. 78-0085 HBT Hawaii

C.A. No. 79-4330

[Filed Jul. 17, 1980]

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL., PLAINTIFFS-APPELLANTS

vs.

HAROLD BROWN, SECRETARY OF DEFENSE, ET AL., DEFENDANTS-APPELLEES

On Appeal from the United States District Court for the District of Hawaii

Before: MERRILL, SCHROEDER and FLETCHER, Circuit Judges

OPINION

MERRILL, Circuit Judge:

This action was brought by appellants, several Hawaii based environmental groups and individuals concerned with the protection of the environment. They seek to require the United States Navy to file an environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA), and to comply with other federal statutes protecting endangered species and historic sites in connection

with alleged plans to store nuclear weapons at the West Loch branch of the Lualualei naval magazine on the island of Oahu, Hawaii.

The West Loch facility has, since 1959, been used for handling and storage of ammunition. It is located one mile from the final approach to a major runway at the Honolulu International Airport and in close proximity to airports at Hickman Airforce Base and Barber's Point Naval Air Station.

In 1975, the Navy prepared an environmental impact assessment (EIA) of the environmental consequences which might result from the planned transfer to West Loch of weapons being stored at Waikele branch of the Laulualei magazine. The assessment concluded that the construction of the magazines and buildings to accommodate the relocation of weapons would have no significant impact on the environment beyond that of the weapons previously stored there. Consequently, it concluded that no EIS was necessary, and none was prepared. However, the EIA did not take into consideration the possibility that nuclear weapons might be stored at the new facility; only conventional weapons had previously been stored at West Loch.

In March, 1977, a contract was let for a portion of the construction dealt with in the EIA. In April, 1978, a contract was let for the balance.

In 1978, the Navy prepared a candidate environmental impact statement (CEIS) entitled "Nuclear Aspects of Naval Weapons Systems Storage." It dealt generally, without reference to any specific site, with the hazards connected with storage of nuclear warheads and concluded that "The handling, storage and transportation of nuclear weapons present no hazards to the environment." It did not discuss the likelihood or potential effects of nuclear explosion or

detonation resulting from sabotage or an accident caused by crash of an airplane into a storage facility.

In March, 1978, this action was brought seeking an injunction against the building of the new facilities until an EIS had been filed. A preliminary injunction was sought and denied. The new facilities have now been completed. It is stipulated that the new construction is capable of maintaining and storing nuclear weapons. Navy regulations, in the interest of national security, will permit it neither to admit nor deny that plans exist to store nuclear weapons there.

The Okiokiolepe Fishpond, listed on the National Register of Historic Places, is located 750 feet from the new storage site. It is virtually the only fishpond left of many that once were located in the Pearl Harbor area. The Hawaiian stilt is a rare waterbird whose habitat is in the West Loch area.

It is the contention of appellants that the EIA does not satisfy the requirements of NEPA, in that it has ignored four critically important environmental factors: (1) The risk of nuclear accidents; (2) The enhancement of that risk by the physical proximity of the airports; (3) The effects of any nuclear accident upon the surrounding population and environment of Hawaii; and (4) The effects of continual low-level radiation from the storage of the weapons near populated areas. It is contended that the CEIS, not being site specific, can supply none of these factors.

The district court concluded that the West Loch project was major federal action significantly affecting the environment, and that the defendants were required to comply with NEPA "to the fullest extent possible." It concluded, however, that the Navy had complied so far as was possible, given certain na-

tional security provisions of the Atomic Energy Act and certain Navy regulations relative to the classification of nuclear weapons. Appellants' case was dismissed, and this appeal followed.

The Navy contends in its brief on appeal:

> "* * * the Atomic Energy Act, and the various Department of Defense and Navy directives which implement that Act, forbid the disclosure of information relating to the presence of nuclear weapons at military bases. There is simply no way that the Department of the Navy can on the one hand preserve the secrecy required by the Atomic Energy Act with respect to the presence or absence at West Loch of nuclear weapons, and on the other hand prepare and make available to the public a statement with respect to the impact upon the environment of the storage of nuclear weapons at West Loch. Compliance with one statute precludes compliance with the other."

Accepting *arguendo* that the Atomic Energy Act and the directives which implement it forbid any disclosure of information regarding the presence of nuclear weapons at a military base, we cannot agree that this precludes preparation of an EIS with respect to the storage of nuclear weapons at West Loch.

An EIS, to be sufficient, must deal not only with the environmental consequences of the original construction involved in the project, but with the environmental consequences of the operation of the facility. *Concerned About Trident* v. *Rumsfeld*, 555 F.2d 817 (D.C. Cir. 1977). If operation involves a choice between alternatives, the decision maker must be so informed as to the consequences of each alter-

native that a knowledgeable choice can be made. Here, the Secretary must be informed as to the consequences of his choice of weapons to be stored. If nuclear storage is a potential choice, he must be adequately prepared to make such choice when the time for decision arrives.

In the present case it is stipulated that the West Loch facilities are capable of storing nuclear weapons. The public therefore must assume that at least the possibility exists that nuclear weapons, to the extent of the apparent capacity of the facility (assuming that capacity would be apparent to a knowledgeable observer), will be stored at West Loch. Thus, an EIS dealing with the consequences of such possibility would reveal nothing with respect to the likelihood of storage of which the public is not already aware. Such a process of informing the decision maker need not imply that the decision has already been made or what the decision is; the Secretary need never reveal the fact that a decision has been made or what it is. However, the public must receive some assurance, particularly in a situation as potentially catastrophic as this one, that when the decision is made the decision maker will have been adequately informed as to the environmental consequences of each alternative, here including the potential consequences of the storage of nuclear weapons at this particular site. Consideration of the four environmental factors specified by appellants as being critically important is essential if the decision maker is to be adequately prepared when the time for decision respecting nuclear storage arrives.

While we recognize that specific information regarding the number and type of nuclear weapons to be stored at West Loch cannot be revealed to the public, this should not preclude preparation of an

EIS, available to the public, generally assessing the impact of such storage. Further, since the EIS in important respects will be hypothetical (hypothesizing, without conceding, that the facility will be put to the use for which it has been made capable), factual information as to the consequences of storage to any specific extent can be based on a series of hypotheses covering the range of options which the facility has openly presented to the Secretary.[1]

We note further that the informing of the decision maker is not the only result flowing from the filing of an EIS pursuant to NEPA. The public also is informed as to the consequences of action being sought by governmental agencies. While courts are reluctant to second-guess an informed decision maker as to what is or is not in the public interest, an in-

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[1] In addition to public disclosure through a hypothetical EIS, the Navy's own regulations recognize the fact that the classified nature of certain essential information—here, the specific number and type of weapons to be stored at West Loch—does not excuse the private disclosure of such information to the Secretary by way of an EIS.

> "The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with the requirements of this Part. Environmental statements, both draft and final, shall be prepared, safeguarded and disseminated in accord with the requirements applicable to classified information * * *. When feasible, these statements shall be organized in such a manner that classified portions can be included as annexes, so that the unclassified portions can be made available to the public."

32 C.F.R. § 214.8(i). While such classified matter need not be publicly disclosed, the public at least is entitled to the assurance that the Secretary has been privately informed in that area and that such matters will be taken into consideration by him in reaching any decision.

formed electorate need not be reluctant. For this reason, it seems to us to be important that the public be informed where, as here, disclosure can be so conditioned as not to impinge upon national security. Otherwise, agencies would be able to escape the consequences of the political process as it may operate on an unpopular decision by concealing from the public the fact that such a decision has been or may be made.

With respect to the Okiokiolepe Fishpond the court below concluded that the construction and use of the new West Loch storage facility would have no impact on the fishpond or on the rare Hawaiian stilt, whose habitat it is. The court so concluded because it accepted the Navy's contention that only the impact of storing additional conventional weapons at West Loch could be considered. We leave it for the district court to determine the effect of § 470(f) of the Historic Preservation Act and of § 1536 of the Endangered Species Act in light of the information contained in the EIS which is prepared by the Navy.

Finally, appellants contend that they should be permitted to amend their complaint on appeal to allege a denial of Fifth Amendment due process. Appellants may advance this contention to the district court on remand.

We conclude that while the district court correctly held that the West Loch project was major federal action, it erred in holding that the Navy has complied with NEPA to the fullest extent possible. We conclude that the EIA and the CEIS provided by the Navy are inadequate and that an EIS is required under the provisions of NEPA.

Reversed and remanded for further proceedings. We leave to the district court the question whether injunctive relief is proper at this time.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 79-4330
DC CV 78-0085-HBT

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL., PLAINTIFFS-APPELLANTS

v.

HAROLD BROWN, SECRETARY OF DEFENSE, ET AL., DEFENDANTS-APPELLEES

Appeal from the United States District Court for the District of HAWAII (Honolulu)

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of HAWAII (Honolulu) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and remanded.

Filed and entered July 17, 1980.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. No. 79-4330

D.C. No. 78-0085 HBT Hawaii

[Filed Oct. 10, 1980]

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL., PLAINTIFFS-APPELLANTS

vs.

HAROLD BROWN, SECRETARY OF DEFENSE, ET AL., DEFENDANTS-APPELLEES

Before: MERRILL, SCHROEDER and FLETCHER, Circuit Judges

ORDER

The panel as constituted in the above case has voted to deny the petition for rehearing. Judges Schroeder and Fletcher have voted to reject the suggestion for a rehearing in banc and Judge Merrill has recommended such rejection.

The full court has been advised of the suggestion for an in banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc. Fed.R.App.P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing in banc is rejected.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 78-0085

[Filed Mar. 13, 1979]

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL., PLAINTIFFS-APPELLANTS

v.

HAROLD BROWN, SECRETARY OF DEFENSE, ET AL., DEFENDANTS-APPELLEES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

This is a suit to enjoin the Navy from using certain newly constructed facilities at the West Loch Branch of its Pearl Harbor Naval Base in Honolulu, Hawaii. The matter came on for hearing on the issuance of a permanent injunction on March 5 and 6, 1979, before the Honorable Howard B. Turrentine. Walter Zulkoski appeared on behalf of plaintiffs, and Elliot Enoki, Assistant United States Attorney, assisted by Samuel Pinn and Jeffrey Wayne, appeared for the defendants.

Plaintiffs seek injunctive relief on the grounds that defendants have violated the National Environmental Policy Act, 42 U.S.C. §§ 4331 et. seq., by failing to prepare an Environmental Impact Statement, and further, that defendants have violated the Endan-

gered Species Act, 16 U.S.C. § 1536 and the National Historic Preservation Act, 16 U.S.C. § 470.

Defendants contend that they are excused from preparing an Environmental Impact Statement due to conflict between National Environmental Policy Act and the Atomic Energy Act, 42 U.S.C. §§ 2011, et. seq., and that they have complied with the requirement of both the Endangered Species Act and the National Historic Preservation Act.

Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1361; 16 U.S.C. § 1540 and 28 U.S.C. § 2201, 2202. Upon consideration of all the evidence presented, the pleadings on file and the argument of counsel, the court now makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure:

FINDINGS OF FACT

Parties

1. The plaintiffs are residents of Honolulu, Hawaii, and use the areas adjacent to the proposed new facilities for recreation and/or residential purposes.

2. The defendants are United States Department of Defense and United States Navy officials sued in their official capacities. Defendants are constructing munitions storage facilities capable of storing and maintaining nuclear weapons on the West Loch Branch of Laulualei Magazine.

3. The United States Navy maintains various munitions storage facilities on the Island of Oahu, State of Hawaii, designated Naval Magazine, Laulualei. One branch of this magazine is located at Waikele.

4. Commencing in 1973, a study was conducted by the United States Navy to determine the feasibility of relocating the Waikele function due to in-

creased residential development in the area and in order to minimize any dangers attendant to movement of ordnance.

5. The study concluded that the West Loch Branch was the preferred relocation site because transportation of ordnance to and from the wharves would be held to a minimum. The study was reviewed by the Explosive Safety Board of the Department of Defense and approved in 1975. The West Loch Branch has been used for ordnance storage and maintenance since 1942.

6. In order to execute the desired relocation, the existing facilities at West Loch had to be expanded, which required programming through the congressionally authorized military construction program. The project was properly submitted to Congress in compliance with all applicable regulations. Congress approved the appropriation and authorized funds for the project based upon the project supporting documentation which included a specific description of the facilities to be constructed and the operations to be conducted within the facilities. The project documentation specifically stated that the facilities were to be built to accommodate ordnance items to be relocated from Waikele.

7. The cost of the facility is over eight million dollars.

8. The Explosive Safety Quantity Distance (ESQD) associated with the relocated functions would fall totally within Navy controlled property and within areas already encumbered by the ESQD arcs from the ammunition handling wharves and existing ammunition storage facilities and would not encumber any inhabited structure publicly or privately owned. The additional facilities would also be pro-

tected from encroachment by residential development due to ESQD safety buffer areas of Navy-owned property.

9. The West Loch storage facility is within the traffic area of Honolulu International Airport and approximately one mile from the landing flight path for flights from the mainland and elsewhere. The Federal Aviation Administration has not established a prohibited flight zone over this area.

10. The Navy prepared a classified Environmental Impact Assessment (EIA) which concluded that the project would have "no significant impact on the environment" and would not be environmentally controversial. In preparing the EIA, the Navy considered Hawaiian Stilt and its habitat, utilizing the services of of a wildlife biologist. There are no other endangered species in the area. The Navy further considered the existence of the Okiokiolepe Fishpond, a site listed on the National Register of Historic Places, and concluded that the fishpond would not be affected by the project.

11. The Navy did not submit an Environmental Impact Statement (EIS) on the project because such a statement would involve discussion of the presence, number, and locations of atomic weapons; the design, utilization, capabilities and capacities of such weapons; and security measures and devices incident to the weapons.

CONCLUSIONS OF LAW

1. Plaintiffs did not wait an unreasonable length of time before commencing this action, and thus are not barred by laches.

2. Defendants have determined that the West Loch project does not jeopardize the Hawaiian Stilt or affect its habitat; therefore, they are not in violation

of the Endangered Species Act, 16 U.S.C. § 1536.

3. As a result of the conclusion reached in the Environmental Impact Assessment regarding the Okiokiolepe Fishpond, defendants are not in violation of the National Historic Preservation Act, 16 U.S.C. § 470.

4. The construction and use of the storage facilities at West Loch is a major Federal action within the meaning of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C).

5. A controversy exists regarding the environmental consequences of the West Loch project, 40 C.F.R. 1500.6(a).

6. The National Environmental Policy Act requires all Federal agencies to comply therewith to the fullest extent possible, 42 U.S.C. § 4331, unless existing law applicable to the agency's operation prohibits or makes compliance impossible, 40 C.F.R. 1500.4(a)(1).

7. Submission of an Environmental Impact Statement would conflict with the security data provisions of the Atomic Energy Act, 42 U.S.C. 2014(y); with security classification guides prepared jointly by the Department of Defense and the Department of Energy, CG-W-4, JOINT ERDA/DOD NUCLEAR WEAPONS CLASSIFICATION GUIDE; and with United States Navy implementation of the joint guide, SWOP 55-1, NAVY SECURITY CLASSIFICATION GUIDE FOR NUCLEAR WEAPONS.

8. Defendants have complied with the National Environmental Policy Act to the fullest extent possible within the restrictions of the security classification guides and the Atomic Energy Act. See, *e.g. Flint Ridge Dev. Co.* v. *Scenic Rivers Ass'n.*, 426 U.S. 776 (1976).

9. Defendants' decision that an Environmental Impact Statement could not be submitted consistent with the Atomic Energy Act was reasonable and not arbitrary or capricious, and thus did not violate the Administrative Procedures Act, 5 U.S.C. § 706(2)(A).

Plaintiffs' motion for permanent injunction is hereby denied.

Let judgment be entered accordingly.

Dated: March 13, 1979, Honolulu, Hawaii.

/s/ Howard B. Turrentine
HOWARD B. TURRENTINE
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action File No. 78-0085

CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT, ET AL., PLAINTIFF

vs.

HAROLD BROWN, SECRETARY OF DEFENSE, ET AL., DEFENDANTS

[Filed Mar. 13, 1979]

JUDGMENT

This action came on for (hearing) before the Court, Honorable HOWARD B. TURRENTINE, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that Plaintiffs' motion for permanent injunction is hereby denied.

Dated at Honolulu, Hawaii, this 13th day of March 1979.

/s/ Walter A. Y. H. Chinn
Clerk of Court

cc: Mr. Walter P. Zulkoski
Mr. Walter M. Heen

APPENDIX F

UNCLASSIFIED
FOR OFFICIAL USE ONLY

ENVIRONMENTAL IMPACT ASSESSMENT

Submitting DOD Component: Department of the Navy

Installation: Naval Magazine, Lualualei, Oahu (West Loch Branch)

Project Title: MILCON Project P-088 and P-093, "Relocation of Waikele Functions"

Date of Submission: 11 March 1975

(Updated 31 May 1977, Revised 8 June 1977)

Prepared by the Pacific Division, Naval Facilities Engineering Command for the Commanding Officer, Naval Magazine, Lualualei for CINCPACFLT, in accordance with OPNAVINST 6240.3D of 24 April 1975, in compliance with Section 102(2)(c) of the National Environmental Policy Act of 1969.

A. *Introduction*

1. *Project Description*:

This project is for the construction of facilities at West Loch Branch necessary to accommodate partial relocation to West Loch Branch of functions that are now housed at the Waikele Branch. This action will effect better consolidation and control of current ordnance activities. This action will reduce the danger to areas surrounding Waikele and utilize the existing explosive safety zones at West Loch (See Attachments A through D).

The project includes the construction of: 48 earth covered magazines, maintenance/inspection shop, addition to an existing shop, security force building, helicopter pad, perimeter barrier/fence, security system, roads/parking, and electrical, water and sewer utility services. These new faciilties will occupy approximately 40 acres located within the existing explosive safety zones from the ammunition wharves (See Attachment D).

2. *Existing Site Characteristics*:

West Loch Branch is a branch of Naval Magazine, Lualualei and is located to the West of Pearl Harbor (see Attachments A through C). West Loch Branch encompasses approximately 1,800 acres and is enclosed to the North and East by Pearl Harbor (West Loch); to the West by private agricultural land and to the South by Navy housing and the Federal Aviation Agency reservation. The proposed site is located between Eleventh and Fifteenth Streets and "G" Avenue near the West Loch shoreline. A second increment is bounded by Eleventh and Twelfth Streets and Bravo Street, where existing pavement is to be strengthened.

The land [on] this site is flat and open, having been used during World War II as a supply area. Earlier structures have now been removed. The soil is basically of coral origin, covered 99% by grass, without other vegetation. The site is near Hale Koa trees along G Avenue, and near an old borrow pit covered with Keawe trees, local shrubs, and grass, containing various birds, insects, and possibly frogs, utilizing moist areas. The site in question is without vegetation conducive to food source and nesting potential.

West Loch Branch is used to off/on load explosive cargo ships and to process and store ammunition and

other ordnance items (See Attachment C). Since the proposed new site is within the existing explosive safety zone from ammunition wharves W-4 and W-5, this relocation of functions represents efficient and economical use of existing land not now fully developed, but which is limited in use for other purposes because of the encumbering explosive safety zone (i.e., cattle grazing, sugar-cane growing, and bee-keeping). Efficient utilization of existing lands is an on-going concern of the U.S. Navy.

B. *Relationship of Proposed Action to Land Use Plans, Policies and Controls for the Affected Area*

The proposed project site to which the functions will be relocated does not conflict with existing or proposed facilities. The West Loch Branch of Naval Magazine, Lualualei, has the capacity to accommodate such functions.

The existing facilities at West Loch Branch will be modified/enlarged to accommodate the new functions without difficulty. The addition of any new facilities adjacent to similar ones conforms to the policy of keeping functions centered in one area.

The relocation of the proposed shops and magazines within West Loch Branch should have negligible effect on the environment on or off base.

The proposed facilities at West Loch Branch will be approximately three miles from the new civilian community developments near Honouliuli and Ewa communities now being planned by the Campbell Estate outside safety zones noted above.

The urban growth of the City and County of Honolulu in this direction is assured in future years, but it is anticipated that the industrial areas presently held by the U.S. Navy plus those approved by public

law for acquisition by land exchange will neither increase nor decrease as the land is efficiently utilized for their continuing functions.

C. *The Probable Impact of the Proposed Action on the Environment*

1. *Assessment of Position and Negative Effects*:

The project will have minimal effects on the environment. The following is stated for the record:

a. *Plant and Animal life*

The limited removal of trees, shrubs and grass at the construction site will not cause detrimental ecological change to the area. There are no known significant species on the site. The normal "Special Considerations" in construction practices would apply.

b. *Historic Sites*

There is a significant fish pond on the National Register of Historic Places that is within the present Naval Reservation near the entrance to West Loch from the Pearl Harbor entrance channel, but this will not be affected. The Okiokiolepe Fish Pond is 0.3 miles NW of Iroquois Point. Its significance is that it is virtually the only fish pond left of the many once located in the Pearl Harbor area (see Attachment B).

c. *Air and Noise Pollution*

Except for some dust and noise during construction, there will be no air/noise pollution. Normal construction practices for keeping dust pollution to a minimum will be observed.

d. *Erosion*

The proposed site area is flat. Erosion will be limited to the earth covering the magazines. This erosion will be controlled by planting grass or by utilizing coral/basalt aggregates cover and, therefore, should not be a pollution problem. The soil and aggregate cover will be obtained from commercial sources on Oahu and the total requirement is estimated at 55,000 cubic yards.

Monitoring of grading practices is being exercised by Commandant, Fourteenth Naval District, to insure that erosion of lands, sedimentation of tributaries, and siltation of Pearl Harbor is kept to a minimum.

e. *Access Roads*

Construction of roads to the facilities involves minimum cut and fill but should not alter the environment. These new roads will be built within the existing compound to serve the new facilities and will be approximately 10% of site area. There are no interior roads on the existing site.

f. *Sanitary Sewage*

Sewage disposal will be accomplished by connection to the existing activated sludge sewage treatment plant, which has the capacity to handle the additional load. Upon completion of the City and County-administered Honoluliuli Sewage Treatment Plant, a sewage connection will be made to this new facility, some time in the future.

g. *Storm Run-Off*

The project is not expected to alter the existing surface drainage on this World War II supply site.

The new buildings and proopsed road and handling pavements will decrease the area of percolation. The porous coral subsurface should accommodate the rainfall expected in this area to prevent flooding.

h. *Toxic Material*

Toxic materials used in the maintenance operation consist of cleaning solvents. These solvents will be collected and disposed of by contract to commercial firms.

i. *Reassignment of Facilities*

The partial relocation of functions from the Waikele Branch will allow redesignation of the present facilities. At the present time, there is no final decision to close out or excess any of the present Waikele Branch facilities which may remain vacant.

2. *Secondary or Indirect Consequences*

a. The relocation of the functions to West Loch Branch will reduce the need to transport ordnance to Waikele Branch. This will result in the conservation of fuel energy and in reducing security requirements for movement of ordnance off base. The consolidation of functions at West Loch Branch should result in a net decrease in funding, equipment and manpower requirements. The decrease in manpower requirements will include only military personnel who will be transferred to other duties at other locations.

b. The relation of the function/workforce to West Loch Branch will result in an increase of 77 military personnel at the West Loch Branch area. Since the relocation involves only a distance of six miles, the impact to the local community is expected to be

negligible. Additionally, there are only ten family quarters at Waikele Branch, negating any significant family relocation.

For the comparison, in 1976 the estimated armed forces strength was 59,700 in Hawaii and estimated City and County of Honolulu work force was 320,300 for a comparable period. The entire island of Oahu is one community area. On this basis a relocation of 77 workers a distance of six miles must be considered insignificant.

D. *Alternatives* (See Attachment A)

1. The alternative of taking no action or of postponing action pending further study will keep the present functions at Waikele Branch. Expansion of the civilian community will be a continuing problem at Waikele Branch, as urban Honolulu growth spreads towards Ewa and Mililani Town and as these communities expand in size. Security requirements will become more stringent as the population increases in the area. Transportation of ordnance between Waikele and West Loch Branch over public highways is becoming unacceptable from the standpoint of safety and security.

2. The proposed partial relocation of functions to West Loch Branch, as is recommended, will answer two problems at the present site. These are the increased safety problems as the surrounding area is urbanized in future years, and the possibility increasing traffic congestion on highways because of greater commuter traffic from outlying communities to urban Honolulu. It also will result in better ordnance control and more effective use of existing lands for the ordnance function.

3. Relocation of these functions to NAS Barbers Point or NAVMAG Lualualei has also been con-

sidered. Relocation to West Loch Branch is the most viable solution from the standpoint of operational, security and safety requirements. From an ecological standpoint, there are similarities in the sites considered.

4. A plan for the consolidation of ordnance originally involved the relocation of ordnance storage from Laulaulei Branch to West Loch Branch and Waikele Branch. Subsequently, the plan was revised to retain Lualualei Branch and relocate the functions at Waikele Branch to Laulaulei Branch. This revised plan was a recommendation of the DOD Project FRESH (Facilities Requirements Evaluation, State of Hawaii) Supplemental Study on ordinance storage on Oahu. The partial relocation of the ordnance storage at Waikele Branch is expected to have minimal adverse impact on the civilian community for the following reasons:

a. The distance between Waikele Branch and West Loch Branch is only six miles.

b. This functional relocation will offset the work location of 77 military personnel. However, movement of families is not required except for the families occupying the ten family quarters at Waikele Branch.

c. Bachelor personnel would either be berthed at West Loch Branch or Naval Air Station Barbers Point or would possibly remain at Waikele Branch until replacement quarters are constructed and all Waikele Branch functions are relocated.

E. *Any Probable Adverse Environmental Effects Which Cannot be Avoided Should the Proposal be Implemented*

There will be temporary dust and noise during construction but no permanent dust/noise problem.

Approximately 45 acres of land will be cleared of trees, shrubs and grass. Except for areas to be occupied by buildings or pavement, grass growth should be back soon after construction, as evident in adjacent open field areas.

F. *The Relationship Between Local Short-Term Use of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity*

The project will be constructed within the existing explosive safety quantity-distance arc, from ammunition wharves W-4 and W-5. The present is compatible with current and planned uses of West Loch Branch.

The consolidation of functions will be beneficial to the military from the standpoint of combining operations at West Loch and eliminating the need to buy/lease additional land totaling 661 acres at Waikele Branch to preclude exposure of civilian personnel to explosive hazards. The land at Waikele can then be used for other purposes.

G. *Any Irreversible and Irretrievable Commitments of Resources that Would be Involved in the Proposed Action Should it be Implemented*

This project requires no major alterations to the site, and there will be no irreversible and irretrievable commitments of resources. However, there will be expenditure of fossil fuel in the moving operation.

The buildings, structures and pavements can be removed at the termination of the requirement. Vegetation will return shortly, as evidenced by growth in adjacent areas, which were previously cleared.

H. *Considerations that Offset the Adverse Environmental Effects*

West Loch Branch is a transit point for the shipment of ammunition by water as well as a storage site. Reducing the need to transport ordnance to Waikele Branch will reduce security force requirements and fuel consumption. If the presently proposed national program for energy conservation is implemented, the reduction of fuel consumption through excessive hauling may become a significant U.S. Navy concern.

Relocating functions out of Waikele Branch will solve the growing safety problem. Consolidation of handling in one location will result in a more efficient operation and will be a step towards reassignment of Waikele Branch facilities for a non-ordnance function.

This relocation of ordnance storage from Waikele Branch will reduce the problem generated by the adjacent residential development and the unsafe condition associated with inhabited buildings within the explosive safety zone. This project will negate the need to acquire 661 acres of private lands surrounding Waikele Branch in order to maintain control of all lands within the explosive safety zone.

This project can be accomplished without impact on the safety or functional uses of West Loch Branch.

I. *Summary*

It is concluded that the project will have no significant effect on the environment and will not be environmentally controversial. Preparation of a candidate Environmental Impact Statement is therefore not considered required.

APPENDIX G

CANDIDATE ENVIRONMENTAL IMPACT STATEMENT

NUCLEAR ASPECTS OF NAVAL WEAPONS SYSTEMS STORAGE

"Prepared in accordance with OPNAVINST 6240.3E in compliance with section 102(2)(c) of the National Environmental Policy Act of 1969."

ENCL (1) TO CNO SER 453/719097 of 28 Mar 1978

CANDIDATE ENVIRONMENTAL IMPACT STATEMENT
NUCLEAR ASPECTS OF NAVAL WEAPONS SYSTEMS STORAGE

SECTION I—INTRODUCTION

A. *PROJECT DESCRIPTION*

Within the role of the Department of Defense for national defense, the development and maintenance of military weaponry/ordnance is among the foremost responsibilities. To maintain an effective defensive posture, offensive capabilities are required to be developed and maintained. This capability is accomplished through establishment of current, effective weapons systems:

The fleet, to conduct its mission of patrolling international waters, must have effective methods of supply and resupply of necessary ordnance. Also the fleet must be configured to react to various tactical and strategic scenarios, including a nuclear attack. Storage sites ashore are a necessary, irreplaceable segment of the national defense capability.

The proposed "action" is to continue to store conventional and/or nuclear ordnance at selected sites and to specifically address the nuclear aspects of said storage with particular attention to any associated "environmental" impact.

B. *Existing Environment of Ordnance Storage Sites*

Ordnance storage facilities owned, and operated by or for, the Armed Services, are constructed in accordance with standards published by the Department of Defense. The governing publication is DoD

Publication 5154.4S, "DoD Ammunition and Explosives Safety Standards", of which the latest edition is dated March 1976. This publication may be purchased from the Superintendent of Documents, Washington, DC, 20402 (Stock No. 008-007-02730-1, price $1.65). Such facilities normally include storage magazines; rail and/or truck facilities to ship munitions in and out; various types of operating functions such as production, renovation, disposal; and, at waterfront activities, one or more piers or wharves to permit transfers of munitions to and from ships.

At ordnance storage facilities, layout of the many functional areas, and the elements thereof; and the permitted concentrations of explosives and explosive-loaded items, are specifically designed to minimize, within practical limits, the possibility of "chain" transmission of explosive effects in the event of an accident at any location on the installation. The DoD Standards mentioned above were developed by the DoD Explosives Safety Board, an organization originally created by the Congress to assure, inter alia, the availability of reasonable and safe standards for military installations involved with explosives.

Munitions storage and operating facilities and the distance requirements which govern their separation one from another and from installation boundaries, are keyed to the allowable quantities of explosive materials which may be concentrated, or grouped, at the individual facilities involved. Normally, this is a direct function of the explosive loading of the munitions which are stored, or processed, at these facilities. This situation is valid for the storage of nuclear munitions as well as for non-nuclear (conventional) munitions. The storage of nuclear weapons *considers*, in addition, the quantity of radioactive material which might be dispersed in event of an *ex-*

plosive accident. Both considerations are fully controlled, in military installations, by limiting the concentrations of weapons so as to minimize any of the possible risk situations. It should be noted that the design and structure of nuclear weapons will not permit an accidental nuclear explosion or a nuclear contribution to the explosion of conventional explosives. National policy therefore dictates storage of nuclear weapons on the basis of high explosive content and/or radioactive contamination potential. As pointed out above, all such storages are specially designed in accordance with DoD standards, and rigorously controlled to avoid the generation of unsafe conditions or concentrations.

SECTION II—*RELATIONSHIP OF PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS FOR THE AFFECTED AREA*

As it is expected that storage sites noted will remain essentially as presently configured, there are no proposed "actions" that affect either the objectives of specific terms of approved or proposed federal, state or local land use plans, policies or controls.

SECTION III—*PROBABLE IMPACT OF THE PROPOSED ACTION ON THE ENVIRONMENT*

Again, as this document is meant to address only the nuclear aspects of weapons system storage, the following "propable" impacts are presented in turn:

A. *That an accident "might trigger a nuclear detonation thereby posing a risk" or expose the population to some "nuclear danger."*

(1) As previously stated, the design and structure of nuclear weapons will not permit an

accidental nuclear explosion or a nuclear contribution to the explosion of conventional explosives. This statement is applicable to both normal and abnormal situations.

(2) Prevention of accidental nuclear detonation is achieved by utilization of the highest state of technology available and through implementation of exhaustive, continuous quality assurance programs.

(3) Production of nuclear weapons is not approved by the government until the design satisfies all safety and performance criteria. Rigid adherence to all specifications and standards are enforced by federal agencies not only during production but also throughout the stockpile-to-target sequence (STS).

(4) The safety features incorporated in nuclear warhead design are dynamically tested. Test results have demonstrated and confirmed that all safety criteria have been satisfied or exceeded on all production weapons. Specific test details are classified SECRET Restricted Data.

(5) Nuclear Saftey Study Groups (NSSG) conduct periodic studies (an initial study prior to Navy acceptance, preoperational study prior to weapon employment and operational reviews thereafter) during which all primary and supporting systems, equipment and procedures utilized in the STS are extensively examined. These studies include transportation, handling, storage, facilities and weapon delivery systems. NSSG members are assigned from other Services, Defense Nuclear Agency, Department of Energy (DOE) and the Navy. Technical advisors are also assigned from various contractor and DoD laboratories and agencies and Navy fleet and shore activities. The studies verify weapon system design and operational safety and develop/verify mandatory safety rules for all nuclear weapon oper-

ations. These safety rules are formally coordinated with the DOE and the Joint Chiefs of Staff and approved by the Secretary of Defense prior to any Navy operations with the weapon.

(6) The safety studies are complemented by on-site inspections conducted at 12-18 month intervals of all Navy activities, ship and shore, that are involved with nuclear weapons. The inspections examine safety, security, technical and operational performance, training and emergency procedures (including accidents). Approximately 25 percent of these inspections are conducted by the Defense Nuclear Agency and the remainder by Navy teams permanently established for this purpose.

B. *That a nuclear weapon accident might result in a release of radiation that would endanger the population.*

(1) The relatively small amounts of conventional high explosives contained in nuclear weapons represents the primary hazard in a nuclear weapon accident.

(2) Release of radioactive material from a nuclear warhead can occur only if the nuclear warhead is ruptured. A rupture of the nuclear warhead is extremely unlikely since the warhead is designed to withstand considerable impact. Tests had confirmed that warheads will remain intact when dropped from heights much greater than those normally experienced in actual handling operations.

(3) In the event of a high explosure detonation, some plutonium material could be spread about the immediate area of the accident. This material will not cause radiological damage to personnel, regardless of one's proximity, if kept outside the body.

(4) Burning weapons, conventional or nuclear, may produce toxic or caustic gases. In addition,, if plutonium is involved in fire, radioactive particles will accompany the toxic or caustic gases in the smoke cloud. However, such smoke clouds are limited to the accident scene, quickly dissipate, and may constitute an internal hazard to personnel at the scene. The smoke should be avoided.

(5) Naval units and facilities incorporate the latest proven designs for enhancing safety and security of nuclear weapons. Moreover, the associated support systems (cranes, hoists, carriers, lifting fixtures, security systems, etc.) are certified under stringent quality control procedures, tested in accordance with rigid schedules and regularly inspected. Warhead storage areas are provided with either automatic water sprinkler/flooding systems or nitrogen inerting systems.

(6) Security of nuclear weapons is provided for by electronic sensors, communication systems, alarms, barriers, locking systems and special armed guards to maintain continual surveillance of warhead storage and handling spaces/areas. This special guard force and backup forces are in addition to the normal military security provided to weapon facilities or commissioned U.S. Navy ships.

(7) Navy nuclear weapon units and facilities are fully equipped and trained to successfully contain and remove any hazards or potential hazards that might result from an accident with a nuclear weapon. These response teams are regularly exercised and evaluated on this capability.

(8) The Navy does have plans for any emergency involving nuclear weapons which would be placed into effect for recovery from any accident. These plans provide for Nuclear Emergency Teams

and Explosive Ordnance Disposal Teams, which possess special qualifications and equipment, to be called upon for assistance in the event their services are required for decontamination or removal and disposal of contaminated material.

(9) Other agencies that are involved in rendering coordination assistance are: the Joint Nuclear Accident Coordinating Center, Navy Area Coordinators, other Services and the Interagency Committee on Radiological Assistance. The Interagency Radiological Assistance Plan (IRAP) describes the responsibilities and relationships of federal, state, and local health, police, fire and civil defense agencies and coordinates the resources of 13 federal agencies (Environmental Protection Agency; Department of Energy; Department of Health, Education, and Welfare; etc.)

C. *That there is danger of radiation escaping from nuclear weapons in storage.*

(1) Construction of nuclear weapons preclude leakage of radioactive material.

(2) There are short range, barely measurable above background radioactive emissions from some nuclear warheads. These emissions are not a hazzard and are confined to the immediate area of a unit. Personnel working in the confined spaces with such units wear radiation monitoring devices to insure that individuals do not receive cumulative exposure in excess of federal standards. When appropriate, sensitive equipment continually monitor weapon storage areas as an extra precautionary measure.

D. *Pursuant to the foregoing, it is concluded that:*

- Handling, storage and transportation of nuclear weapons present no hazards to the environment,

- Low level radioactive emissions from nuclear warheads are sufficiently low to pose no threat to the environment or to personnel health and safety, and

- Therefore, the nuclear aspects of weapons storage do not constitute an "environmental factor" per se, and can be excluded from any assessment prepared under the National Environmental Policy Act that addresses the conventional or construction aspects of ordnance storage handling facilities.

SECTION IV—ALTERNATIVES

None, as it is national policy to maintain an effective defensive posture, to include offensive capabilities. Safe, secure nuclear weapon capable ships and weapon storage and handling facilities are not only inseparable elements of this posture but also serve the best interest of the public.

SECTION V—PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

None; within the context of the subject addressed.

SECTION VI—RELATIONSHIP BETWEEN LOCAL SHORT TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT TO LONG TERM PRODUCTIVITY

Not considered applicable within the context addressed.

APPENDIX H

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This document consists of 162 pages
Number 955 of 1,250 Copies, Series A

CG-W-4

JOINT ERDA/DOD
NUCLEAR WEAPON CLASSIFICATION GUIDE

U.S. ENERGY RESEARCH and
DEVELOPMENT ADMINISTRATION

Division of Classification
Washington, D.C. 20545

Classified by:

/s/ John A. Griffin
JOHN A. GRIFFIN
Director
Division of Classification

CRITICAL NUCLEAR
WEAPON DESIGN INFORMATION
DoD DIR 5210.2

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23 MAR

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TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1710 Planning Information		
1711 Planning or construction information revealing that installation is a nuclear weapon storage site	C-TS FRD	Special circumstances, such as international sensitivity of site location, will be considered in determining the level of classification.
1711.1 When purpose is not disclosed	U-TS NSI	X GDS 5(B)(3). Ordinarily unclassified. Classification may be required because of international commitments and sensitivity at a foreign location.
1720 Locations		
1721 Information revealing installation is a storage site for nuclear weapons, whether or not presence of weapons can be determined	C-TS FRD	Specifically, the term ISAS site: when used in conjunction with a unit designation and/or a geographical location in Europe, if classified at a minimum of S-FRD. Applies equally to permanent and temporary (field) installation. Special circumstances, such as international or domestic sensitivity of site location, will be considered in determining the level of classification. This does not apply to the fact of capability to store or handle nuclear weapons which is unclassified.
1722 Information revealing that an installation was a National Stockpile Site (NSS)	C FRD	
1723 That nuclear weapons are stored in any State without revealing a specification	U-C FRD	Classification of specific locations will be governed by the domestic political climate, the sensitivity of the site location, and in relation to national planning.

TOPIC		CLASS.	REMARKS
1700	**STORAGE AND STOCKPILE**		
1720	**Locations (continued)**		
1724	**Presence of nuclear weapons in countries other than U.S.A.**		International sensitivity of site location, local political climate, national and international military planning, and relation to U.S. strategic/tactical operations, will be considered in determining the appropriate level of classification.
1724.1	**In terms of a geographical area**	**U-TS FRD**	The fact that there are several thousand nuclear weapons in Europe and the fac that there are nuclear weapons in CINCPAC's area of responsibility is unclassified.
1724.2	**In terms of a regional defense organization**	**U-TS FRD**	Fact of nuclear weapons in NATO is unclassified.
1724.3	**In terms of a geopolitical unit (country; or United States possession, territories, or other areas under U.S. administra-administration)**	**C-TS FRD**	
1724.4	**In terms of specific locations defined above**	**C-TS FRD**	See Topics 1724, 1724.2 and 1724.3.
1724.5	**In terms of planning and negotiation**	**C-TS NSI**	X GDS 5(B)(3).

TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1730 Capacity		
1731 Capacity in terms of quantity of specific types of nuclear weapons	**U-S FRD**	**Type refers to MK, B, or W number. If location is revealed, see Section 1720 and the remarks on Topic 1711.**
1732 Quantity of nuclear weapons actually at a site	**C FRD**	**If location is revealed, see Section 1720 and the remark on Topic 1711.**
1740 Security		
1741 Individual measures or protective devices employed	**U-S NSI**	**X GDS 5(B)(3).**
1742 Overall security measures for a site	**S-TS NSI**	**X GDS 5(B)(3). Includes plans, specifications, and detailed layout of protective alarm systems. May be RD or FRD if nuclear weapon emergency destruction plans are included.**
1743 Defensive plans for storage sites	**S-TS NSI**	**X GDS 5(B)(3). Segments of the plan may be assigned a lower classification. This can be determined by individual importance of successful completion of the overall plan.**
1744 Storage site vulnerability studies	**S-TS NSI**	**X GDS 5(B)(3).**
1744.1 Estimates of degree of vulnerability	**S NSI**	**X GDS 5(B)(3).**
1744.2 Methods to defeat security measures at nuclear weapon storage sites	**S NSI**	**X GDS 5(B)(3).**

TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1740 Security (Continued)		
1745 Aerial photographs or other airborne imagery	U-TS NSI May be FRD	X GDS 5(B)(3). Classify in accordance with what individual photograph reveals, such as defense plans and the fact that they are nuclear weapon storage sites.
1750 Association with Operational Organizations in the United States or Overseas		When units cannot be identified as Nuclear Units or Nuclear Capable Units, information about these units will receive the normal security protection afforded like conventional units.
1751 That the U.S. has Nuclear Units and Nuclear-Capable Units among its operating force	U	
1751.1 Identification of these units as such by number, name, or other designation	U	Identification, per se, does not establish presence of nuclear weapons; when presence of nuclear weapons is established by other factors, classify information revealing movement/location of designated unit per applicable topic covering nuclear weapon locations.
1751.2 Information specifying the location of individual units	U-TS FRD	Unclassified if possession of nuclear weapons is not established. If possession is confirmed, classify accordingly. See Topic 1724 and its remarks.
1752 That a particular Nuclear-Capable Unit actually has nuclear weapons	C-TS FRD	The fact that SSBN's on patrol carry 16 missiles with nuclear warheads is unclassified. See Topic 1724 and its remarks.

TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1750 Association with Operational Organizations in the United States or Overseas (continued)		
1753 Capacity of a Nuclear or Nuclear-Capable Unit in terms of numbers of each specific type of-nuclear weapon which can be delivered, handled, or stored	U-S FRD	See Topic 1724 and its remarks.
1753.1 Capacity of an aircraft or truck	U	
1754 That a Nuclear Unit actually has nuclear weapons	U-TS-FRD	The fact that MINUTEMAN and TITAN and SAFEGUARDS System missiles in silos have nuclear warheads in place or that aircraft units in CONUS known on an unclassified basis to be on nuclear alert have nuclear weapons in place is unclassified. In other cases, classify in accordance with numbers or location considerations covered by other topics in this section.
1755 Number of nuclear weapons in storage or with a Nuclear or Nuclear-Capable Unit	C-TS FRD	See Topics 1724 and 1754 remarks.

TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1760 Missile Sites, U.S. Army		
1761 Locations	**U or S NSI**	**X GDS 5(B)(3). S only for military reasons contingent upon defense sensitivity of location of site. Normally unclassified. FRD if it reveals the location of a nuclear weapon storage site.**
1762 Number of launch pads or launchers	**U**	
1763 Number of nuclear warheads authorized per site	**U-C FRD**	**U for the SAFEGUARD System.**
1764 Number of nuclear warheads actually at site	**C-TS FRD**	**See Topics 1724 and 1754 remarks. May be TS if sensitive location information is revealed.**
1770 Missile Sites, U.S. Air Force		
1771 Locations	**U-C NSI**	**X GDS 5(B)(3). Location of missile launchers and control centers per se are classified only if expressed more precisely than to the nearest minute in North American Datum System coordinates. If classified location of nuclear weapons is included, see other topics in this section.**
1772 Numbers of launchers or launch pads	**U**	
1773 Number of nuclear warheads authorized per site	**C FRD**	

TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1770 Missile Sites, U.S. Air Force		
1774 Number of nuclear warheads atcually at site	**C-TS FRD**	**See Topics 1724 and 1754 remarks. TS if sensitive location information is revealed.**
1780 Logistical Transportation and Accidents		
1781 The number of nuclear weapons involved in and the location of an accident	**U-TS FRD**	**Information releases that nuclear weapons are involved in an accident may be made at the lowest operating levels in accordance with ERDA and DOD instructions. Further information is released as unclassified after review of the circumstances of the accident.**
1790 Stockpile Quantities and Production Rates		
1791 The classification indicated in this section is based on information revealed by quantities only. Classification guidance for design information including nomenclature and storage site locations is provided in other topics of this guide		**See Topics 1720, 1760, and 1770.**
1792 Total stockpile quantities of all thermonuclear and fission weapons when the figures show the number of each weapon by specific wepaon type	**S FRD**	**Type refers to MK or W number.**

TOPIC	CLASS.	REMARKS
1700 STORAGE AND STOCKPILE		
1790 Stockpile Quantities and Production Rates (continued)		
1792.1 The stockpile quantities or production rates of a single weapon type	**S FRD**	
1793 Grand total quantity of nuclear weapons in stockpile when described as a collective figure only, e.g., "There is a grand total of X number of weapons in stockpile"	**S-FRD**	**However, the statement that we maintain a total number of nuclear warheads, tactical, as well as strategic, in the tens of thousands is unclassified.**
1794 Stockpile quantities of nuclear or nonnuclear components that reveal information classified by Topics 1792 and 1793	**S FRD**	
1794.1 Otherwise	**U**	
1795 Production rates for a period of one year or more of all thermonuclear and fission weapons when the figures show the number produced by each weapon by specific weapon type	**S FRD**	**Type refers to MK or W number.**

	TOPIC	CLASS.
1796	Production rates of all thermonuclear and fission weapons when given as a collective figure only, e.g., "the production rate for FY 19— is X number of weapons"	S FRD
1797	Production rates of nuclear or nonnuclear components that reveal information classified by Topics 1792 through 1796	S FRD
1797.1	Otherwise	U
1798	Random numerical identifiers of nuclear weapons or of nuclear weapon parts provided ratio to stockpile totals is not revealed	U

APPENDIX I

RESTRICTED DATA

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NAVY SWOP 55-1

TECHNICAL MANUAL

NAVY SECURITY CLASSIFICATION GUIDE FOR NUCLEAR WEAPONS (U)

Published under the authority of the Secretary of the Navy.

CLASSIFIED BY
CG-W-4 DATED
JULY 1974

[SEAL]

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SER 009D32/670212

23 MAR 1978

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TECHNICAL MANUAL

NAVY SECURITY CLASSIFICATION GUIDE FOR NUCLEAR WEAPONS

(TITLE UNCLASSIFIED)

PARAGRAPH CLASSIFICATION:

Pursuant to and in accordance with special authority granted by the Assistant Secretary of Defense (Comptroller), this technical manual is not paragraph-marked as otherwise would be required by DOD Directive 5200.1R.

CHANGE NOTICE

If required, upon insertion of this change into applicable publication, the copy number appearing on the replaced title page shall be transferred to the new title page.

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1 OCTOBER 1975

Change 2—15 September 1977

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DEPARTMENT OF THE NAVY
Washington, D.C., 1 October 197—

BY ORDER OF THE SECRETARY OF THE NAVY

OFFICIAL:

THOMAS L. ATCHISON
Lieutenant Commander, U.S. Navy
Naval Liaison Officer, JAWPS

FREDERICK H. MICHAELIS
Admiral, U.S. Navy
Chief of Naval Material

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TOPIC	CLASSIFICATION	REMARKS
2-11.7 SECURITY.		
2-11.7.1 Individual measures or protective devices employed.	U-S	
2-11.7.2 Overall security measures for a site.	S-TS	Includes plans, specifications, and detailed layout of protective alarm systems. May be RD or FRD if emergency destruction plans are included.
2-11.7.3 Defense plans for storage sites.	S-TS	Segments of the plan may be assigned a lower classification. This can be determined by individual importance of successful completion of the overall plan.
2-11.7.4 Storage site vulnerability studies.	S-TS	
2-11.7.4.1 Estimates of degree of vulnerability.	S	
2-11.7.4.2 Methods to defeat security measures at nuclear weapons storage sites.	S	
2-11.7.5 Aerial photographs or other airborne imagery.	U-TS	Classify in accordance with what individual photograph reveals, such as defense plans and the fact that they are nuclear weapon sites.

APPENDIX J

[EMBLEM]

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
Washington, D.C. 20350

In Reply Refer To
OPNAVINST 5721.1C
OP-616

APR 28 1975

OPNAV INSTRUCTION 5721.1C

From: Chief of Naval Operations

Subj: Release of information on nuclear weapons and on nuclear capabilities of U.S. Forces

Ref: (a) OPNAVINST 8110.16C (Nuclear Weapon Accidents, Significant Incidents, and Incidents; notification procedures for)

1. *Purpose.* To promulgate regulations concerning release of information about nuclear weapons and nuclear capability of U.S. Forces, in order to implement the policy of the United States Government neither to confirm nor to deny the presence or absence of nuclear weapons or components on board any ship, station, or aircraft.

2. *Cancellation.* OPNAVINST S5721.1B of 22 June 1967 is cancelled and superseded by this Instruction.

3. *Information.* The requirements stated in paragraph 4 of this instruction are regulatory and mandatory. These requirements apply to and are binding upon all members of the naval service who are subject to the Uniform Code of Military Justice. Violation of any provision contained in paragraph 4 of

this instruction is punishable in accordance with the Uniform Code of Military Justice.

4. *Regulations*

a. No member of the naval service shall reveal, purport to reveal, or cause to be revealed any information, rumor, or speculation with respect to the presence or absence of nuclear weapons or components on board any ship, station, or aircraft, either on his own initiative or in response, direct or indirect to any inquiry. The spreading of inaccurate or distorted information with respect to the location of nuclear weapons or components may be as damaging to the United States as the revealing of accurate information. Accordingly, provisions of this paragraph apply without regard to the accuracy of such information, rumor, or speculation, and without regard to the belief of such member of the naval service as to the accuracy of such information, rumor, or speculation.

b. No member of the naval service who receives or is informed of any request, oral or written, for information or assurances with respect to the presence or absence of nuclear weapons or components on board any ship, station, or aircraft shall provide any such information or assurance. The only such information which may be provided in response to such a request is that it is the policy of the United States Government neither to confirm nor deny the presence or absence of nuclear weapons or components on board any ship, station, or aircraft.

c. The provisions of this paragraph continue to apply, notwithstanding the fact that certain weapons systems have been publicly identified as having nuclear capability, and notwithstanding any discussion in the press or in other media with respect to

the presence or absence of nuclear weapons or components on board any ship, station, or aircraft, or in any general location.

d. Any contemplated release of information of the type which is the subject of this instruction, shall be submitted—via appropriate military channels—to CHINFO for clearance. Such referral does not constitute violation of this instruction.

e. Notwithstanding the provisions of subparagraphs 4a, 4b, 4c, and 4d of this instruction, in the event of a nuclear weapon accident or significant incident, as defined in reference (a) [OPNAVINST 8110.16C], persons specified in reference (a) may, as described therein, officially confirm the presence of the weapon or component involved.

f. The provisions of this instruction shall not apply to any disclosures required by higher authority.

5. *Action*

a. All members of the naval services will comply with regulations contained in this instruction.

b. Commanders, commanding officers, and officers, and officers in charge will give this instruction the widest possible dissemination, ensure that each member of the naval service is aware of his responsibility to comply with the regulations contained in this instruction, and emphasizes the importance of such compliance to the national interest.

/s/ J. P. Moorer
J. P. MOORER
Deputy Chief of Naval
Operations
(Plans, Policy and Operations)

Distribution:
(See page 3)

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